

PROBLEM-SOLVING COURTS PRACTICE GUIDELINES
Program Participation Credit Time

I. Definitions

- A. "Credit Time" or "Good Time Credit" refers to time awarded pursuant to IC 35-50-6 and is based on good behavior while imprisoned for a crime or imprisoned awaiting trial or sentencing.
- B. "Time Served" refers to actual days spent imprisoned for a crime or imprisoned awaiting trial or sentencing.

II. Indiana Law

- A. Credit time classes (IC 35-50-6-3)
- B. Credit time assignments (IC 35-50-6-4)
- C. Deprivation of credit time (IC 35-50-6-5)
- D. A person imprisoned for a crime earns credit time. Except as set forth under IC 35-38-2.5.-5, a person does not earn credit time while on parole or probation. A person who, upon revocation of parole, is imprisoned on an intermittent basis does not earn credit time for the days he spends on parole outside the institution. (IC 35-50-6-6)
- E. A person serving a term of incarceration (intermittent or consecutive) as a condition of probation does not earn credit time. (IC 35-38-2-2.3)
- F. A person confined on home detention as a condition of probation earns credit for time served. (IC 35-38-2.5-5) (See *Dishroon v. State*, 722 N.E.2d 385 (Ind. Ct. App. 2000))
- G. A person who is placed in a community corrections program under IC 35-38-2.6 earns credit time as well as credit for time served. (IC 35-38-2.6-6)
- H. In *Arthur v. State*, 950 N.E.2d 343 (Ind. Ct. App. 2011), the Court held that Arthur was entitled to credit time for time served during placement in a home detention community corrections program on a suspendible sentence. (IC 35-38-2.6-6)

III. Summary

- A. State statute establishes a right to credit time and/or credit for time served for various groups of people in the criminal justice system. If a problem-solving court participant is incarcerated or otherwise confined in conjunction with program participation then it must be determined if any of these statutes are applicable and if the award of credit time and/or credit for time served is appropriate. Accurate calculation in accordance with these statutes becomes particularly important if a participant is terminated from the program and is thereafter incarcerated with the Department of Correction or in a jail.
- B. A court may choose to incorporate a “waiver” provision in the participation agreement whereby the participant agrees that he/she is not entitled to credit time during program participation. Such a provision was discussed by the Indiana Court of Appeals in an unpublished opinion, *Stapleton v. State*, 855 N.E.2d 1076 (Ind. Ct. App. 2006) and again in *House v. State*, 2009 Ind. App. LEXIS 285 (Ind. Ct. App. Feb. 24, 2009).

In *Stapleton*, the Court of Appeals appears to accept the State’s argument that a participation agreement is a contractual arrangement in which the defendant is permitted to give up certain rights in exchange for a favorable outcome. However, the Court cautions that any such a waiver of rights must be clear and explicit to be enforceable.

The Court in *House* concluded that a participant “imprisoned due to violating the terms and conditions of a drug court is entitled to credit time.” However, the participant may waive credit time for sanctions imposed by the drug court when entering into a drug court agreement containing a provision waiving the right to credit time.

- The following credit time waiver language is offered as an example of a provision that may be incorporated into a participation agreement:

“I agree to waive my right to earn credit time for any time spent in jail or otherwise confined to which I would otherwise be entitled pursuant to Indiana law during my participation in this program.”